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Filed via ECFS

September 29, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109*

Dear Ms. Dortch:

On September 23, 2011, Paul Cooper and Tim Morrissey from Fred Williamson & Associates, Inc. (FWA), Michael Romano from the National Telecommunications Cooperative Association (NTCA), and the undersigned discussed with Commission staff information related to the Connect America Fund and Restructure Mechanism projections for several rural ILEC clients of FWA. Discussion at the meeting referenced provisions of Kansas telecommunications law and a Kansas Universal Service Fund (KUSF) docket. We committed to provide copies of these documents, which are attached hereto.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (202) 682-2495 or jdupree@neca.org.

Sincerely,.

A handwritten signature in black ink that reads "Jeffrey E. Dupree". The signature is written in a cursive, flowing style.

cc: Carol Matthey
Steve Rosenberg
Katie King
Gary Seigel

Attachments

1. Kansas Law establishing the KUSF and Kansas intrastate access reform. Specifically, see the highlighted sections:
 - Section 6(c) – Access reform to mirror interstate rates. Revenue shortfall to KUSF.
 - Section 6(d) – With access reform, raise local rates to statewide rural average. Additional revenue reduces access reform revenue assigned to KUSF.
 - Section 8(c) – Kansas Corporation Commission (KCC) may review the reasonableness of local rate increases.
 - Section 9 – KUSF.
 - Section 9(d) – KCC may review the reasonableness of costs assigned to KUSF. The KCC has performed full audits of each rural ILEC to implement this section. Section 9(f) – Additional funding provided if need as proved in a full rate case.

Implementation of this Law has been to not allow Kansas ILECs to automatically receive KUSF funding with no review, i.e., there is no automatic “make whole” provision. The KCC has required every rural ILEC to show a cost-based need for the KUSF funding provided as a result of intrastate access reform in a full audit. In addition, need for further funding can only be received through a full rate case proceeding.

2. Kansas Order establishing a proceeding to review the KUSF in light of the FCC’s current universal service and intercarrier compensation reform effort:
 - The KCC has issued an Order opening a docket (Dkt. No. 12-GIMT-170-GIT) to explore changes that will be needed to maintain the KUSF in light of the FCC’s intent to develop a National Broadband Plan, to reform the federal universal service fund, and to reform intercarrier compensation.
 - The KCC docket will review the definition of universal service and evaluate whether modification of the KUSF is justified under K.S.A. 2010 Supp. 66-2008(c), taking into account the goals of the Kansas Telecommunications Act of 1996 as articulated by the Legislature in K.S.A. 66-2001.

COMMENTS ON THE KANSAS LAW

KANSAS LAW

Chapter 268

Senate Substitute for Substitute for HOUSE BILL No. 2728

An Act concerning telecommunications services; amending K.S.A. 66-127, 66-1,187 and K.S.A. 1995 Supp. 66-125, 75-4709 and repealing the existing sections; also repealing K.S.A. 66-124.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. It is hereby declared to be the public policy of the state to:

(a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;

(b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;

(c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;

(d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and

(e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

Sec. 2. K.S.A. 66-1,187 is hereby amended to read as follows: 66- 1,187.
As used in this act:

(a) ``Broadband'' means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second.

(b) ``CLASS services'' means custom local area signaling services, which include automatic callback, automatic recall, calling number identification, selective call rejection, selective call acceptance, selective call forwarding, distinctive ringing and customer originated trace.

(c) ``Commission'' means the state corporation commission.

(d) ``Dialing parity'' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications carrier of the customer's designation from among two or more telecommunications carriers, including such local exchange carrier.

(e) ``Federal act'' means the federal telecommunications act of 1996, P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. 151, et seq.)

(f) ``ISDN'' means integrated services digital network which is a network and associated technology that provides simultaneous voice and data communications over a single communications channel.

(g) ``LATA'' has the meaning ascribed to it in the federal act.

(h) ``Local exchange carrier'' means any telecommunications public utility or its successor providing switched telecommunications service within any local exchange service area, as approved by the commission on or before January 1, 1996. However, with respect to the Hill City exchange area, in which multiple carriers were certified by the commission prior to January 1, 1996, the commission's determination, subject to any court appeals, of which authorized carrier shall serve as the carrier of last resort will determine which carrier shall be deemed the local exchange carrier for that exchange.

(i) ``Number portability'' has the meaning ascribed to it in the federal act.

(j) ``1 + intraLATA dialing parity'' means the ability of a local exchange service customer to specify the telecommunications or local exchange carrier that will carry the intraLATA long distance messages when that customer dials either ``1'' or ``0'' plus a 10-digit number.

(k) ``Operating area'' means:

(1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal communications commission;

(2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission.

(l) ``Rural telephone company'' has the meaning ascribed to it in the federal act, excluding any local exchange carrier which together with all of its affiliates has 20,000 or more access lines in the state.

(m) ``Telecommunications carrier'' means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited

to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996.

(a) (n) ``Telecommunications public utility'' means any public utility, as defined in K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages, as defined in K.S.A. 66-104, and amendments thereto, or the provision of telecommunications services in or through throughout any part of Kansas.

(b) ``Commission'' means the state corporation commission.

(o) ``Telecommunications service'' means the provision of a service for the transmission of telephone messages, or two-way video or data messages.

(p) ``Universal service'' means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services.

(q) ``Enhanced universal service'' means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent; full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services.

New Sec. 3. The commission shall:

(a) Adopt a definition of ``universal service'' and ``enhanced universal service,'' pursuant to subsections (p) and (q) of section 2;

(b) authorize any requesting telecommunications carrier to provide local exchange or exchange access service pursuant to subsection (a) of section 4;

(c) on or before July 1, 1996, the commission shall initiate a proceeding to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers;

(d) review, approve and ensure compliance with network infrastructure plans submitted by local exchange carriers pursuant to section 6;

(e) review, approve and ensure compliance with regulatory plans submitted by local exchange carriers pursuant to section 6;

(f) on or before January 1, 1997, establish, pursuant to section 7, the Kansas lifeline service program, hereinafter referred to as the KLSP;

(g) initiate and complete a proceeding by January 1, 1997, to establish a competitively neutral mechanism or mechanisms to fund: dual party relay services for Kansans who are speech or hearing impaired; telecommunications equipment for persons with visual impediments; and tele-communications equipment for persons with other special needs. This funding mechanism or mechanisms shall be implemented by March 1, 1997;

(h) on or before January 1, 1997, establish the Kansas universal service fund pursuant to section 9, hereinafter referred to as the KUSF, and make various determinations relating to the implementation of such fund;

(i) authorize all local exchange carriers to provide internet access as outlined in section 12 and report on the status of the implementation provisions to specified legislative committees;

(j) review the federal act and adopt additional standards and guidelines as necessary for enforcing slamming restrictions;

(k) commencing on June 1, 1997 and periodically thereafter, review and, to the extent necessary, modify the definition of universal service and enhanced universal service, and KUSF, taking into account advances in telecommunications and information technology and services;

(l) on or before January 1, 1997, initiate and complete a proceeding to establish minimum quality of service standards which will be equally applicable to all local exchange carriers and telecommunications carriers in the state; any local exchange carrier or telecommunications carrier violating such standards, for each occurrence, shall forfeit and pay a penalty of not less than \$100, nor more than \$5,000; violations of such standards shall be enforced in accordance with provisions of K.S.A. 66-138 and 66-177, and amendments thereto; and

(m) on January 1, 2000, prepare and submit a report to the legislature. The report shall include an analysis of the manner in which the regulatory framework has served to: Protect consumers; safeguard universal service; ensure that consumers have reaped the benefits of competition; maximize the use of market forces; and promote development of the telecommunications infrastructure throughout the state. The commission also shall recommend if and how the KUSF should be modified.

New Sec. 4. (a) On or before September 1, 1996, the commission shall begin to authorize applications for certificates of public convenience and necessity to provide local exchange or exchange access service.

(b) A local exchange carrier shall be required to offer to allow reasonable resale of its retail telecommunications services and to sell unbundled local loop, switch and trunk facilities to telecommunications carriers, as required by the federal act and pursuant to negotiated agreements or a statement of terms and conditions generally available to telecommunications carriers.

(c) To encourage telecommunications carriers to build or install telecommunications facilities, including, but not limited to, local loop and switching facilities in the state, and except as otherwise negotiated by a local exchange carrier and a telecommunications carrier, the prices for such unbundled facilities shall be determined by the commission, on a nondiscriminatory basis, to permit the recovery of costs and a reasonable profit. The commission shall determine wholesale rates on the basis of retail rates charged subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs, that will be avoided by the local exchange carrier. The commission shall approve resale restrictions proposed by any local exchange carrier which prohibit resellers from purchasing retail telecommunications services offered by that local exchange carrier to one category of customers and reselling those retail services to a different category of customers. Upon a finding that such practice would be anti-competitive, anticonsumer or detrimental to the quality of the network infrastructure, the commission may prohibit the resale of retail services at a rate lower than the wholesale rate. The commission shall approve any other reasonable limitation on resale to the extent permitted by the federal act.

(d) As provided in the federal act, in order for telecommunications carriers to provide local exchange service and exchange access service, local exchange carriers shall provide the means to interconnect their respective customers, including, but not limited to, toll access, access to operator services, access to directory listings and assistance, and access to E911 service.

(e) Customers shall be accorded number portability and local dialing parity in conformance with national standards to the extent economically and technically feasible. Terms and prices for interconnection, unbundled facilities and resale of existing retail telecommunications services shall be negotiated in good faith between the parties. During the period from the 135th through the 160th day after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition the commission to arbitrate any open issues. Arbitration shall occur in conformance with the provisions of section 252 of the federal act.

(f) The commission shall require, consistent with the terms of the federal act, that 1 + intraLATA dialing parity be provided by all local exchange carriers and telecommunications carriers coincidentally with the provision of in-region interLATA toll services in the state by local exchange carriers with more than 150,000 access lines or their affiliates.

New Sec. 5. (a) Pursuant to subsection (f)(1) of section 251 of the federal act, the obligations of an incumbent local exchange carrier, which include the duty to negotiate interconnection, unbundled access, resale, notice of changes and collocation, shall not apply to a rural telephone company unless such company has received a bona fide request for interconnection, services or network elements and the commission determines that such request is not unduly economically burdensome, is technically feasible and preserves and enhances universal service.

(b) On July 1, 1996, the commission shall initiate a rulemaking procedure to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers. The preservation and advancement of universal service shall be a primary concern. The commission shall issue the guidelines no later than December 31, 1996.

(c) Pursuant to subsection (f) of section 253 of the federal act, any telecommunications carrier that seeks to provide telephone exchange service or local exchange access in a service area served by a rural telephone company shall meet the requirements of subsection (e)(1) of section 214 of the federal act for designation as an eligible telecommunications carrier for that area before being permitted by the commission to provide such service; however, the guidelines shall be consistent with the provisions of subsection (f) (1) and (2) of section 253 of the federal act.

(d) The commission may grant a certificate to provide local exchange or exchange access service in the service area of a rural telephone company if, among other issues to be considered by the commission, the application for such certificate complies with commission guidelines issued pursuant to subsection (b).

(e) Any restrictions established by the commission for rural entry of competitors or for resale and unbundling of services shall not apply to any service area of a rural telephone company if such company, or an entity in which such company directly or indirectly owns an equity interest of 10% or more, provides local exchange or exchange access service, as authorized under section 4 and this section, in any area of the state outside of its local exchange areas, as approved by the commission on or before January 1, 1996, and outside of any area in which it is the successor to the local exchange carrier serving such area on or before January 1, 1996.

New Sec. 6. (a) Each local exchange carrier shall file a network infrastructure plan with the commission on or after January 1, 1997, and prior to January 1, 1998. Each plan, as a part of universal service protection, shall include schedules, which shall be approved by the commission, for deployment of universal service capabilities by July 1, 1998, and the deployment of enhanced universal service capabilities by July 1, 2001, as defined pursuant to subsections (p) and (q) of section 2, respectively. Each plan shall demonstrate the capability of the local exchange carrier to comply on an ongoing basis with quality of service standards to be adopted by the commission no later than January 1, 1997.

(b) In order to protect universal service, facilitate the transition to competitive markets and stimulate the construction of an advanced telecommunications infrastructure, each local exchange carrier shall file a regulatory reform plan at the same time as it files the network infrastructure plan required in subsection (a). As part of its regulatory reform plan, a local exchange carrier may elect traditional rate of

return regulation or price cap regulation. Carriers that elect price cap regulation shall be exempt from rate base, rate of return and earnings regulation. However, the commission may resume such regulation upon finding, after a hearing, that a carrier that is subject to price cap regulation has: violated minimum quality of service standards pursuant to subsection (1) of section 3; been given reasonable notice and an opportunity to correct the violation; and failed to do so. Regulatory reform plans also shall include:

(1) A commitment to provide existing and newly ordered point-to-point broadband services to: Any hospital as defined in K.S.A. 65-425, and amendments thereto; any school accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; any public library; or other state and local government facilities at discounted prices close to, but not below, long-run incremental cost; and

(2) a commitment to provide basic rate ISDN service, or the technological equivalent, at prices which are uniform throughout the carrier's service area and which are designed to stimulate the development of an extensive residential market. Local exchange carriers shall not be required to allow retail customers purchasing the foregoing discounted services to resell those services to other categories of customers. Telecommunications carriers may purchase basic rate ISDN services for resale in accordance with section 4. The commission may reduce prices charged for services outlined in provisions (1) and (2) of this subsection, if the commitments of the local exchange carrier set forth in those provisions are not being kept.

(c) Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions. Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid out from the KUSF pursuant to section 9. Rural telephone companies shall reduce their intrastate switched access rates to interstate levels on March 1, 1997, and every two years thereafter, as long as amounts equal to such reductions are recovered from the KUSF.

(d) Beginning March 1, 1997, each rural telephone company shall have the authority to increase annually its monthly basic local residential and business service rates by an amount not to exceed \$1 in each 12 month period until such monthly rates reach an amount equal to the statewide rural telephone company average rates for such services. The statewide rural telephone company average rates shall be the arithmetic mean of the lowest flat rate as of March 1, 1996, for local residential service and for local business service offered by each rural telephone company within the state. In the case of a rural telephone company which increases its local residential service rate or its local business service rate, or both, to reach the statewide rural telephone company average rate for

such services, the amount paid to the company from the KUSF shall be reduced by an amount equal to the additional revenue received by such company through such rate increase. In the case of a rural telephone company which elects to maintain a local residential service rate or a local business service rate, or both, below the statewide rural telephone company average, the amount paid to the company from the KUSF shall be reduced by an amount equal to the difference between the revenue the company could receive if it elected to increase such rate to the average rate and the revenue received by the company.

(e) For regulatory reform plans in which price cap regulation has been elected, price cap plans shall have three baskets: Residential and single-line business, including touch-tone; switched access services; and miscellaneous services. The commission shall establish price caps at the prices existing when the regulatory plan is filed subject to rate rebalancing as provided in subsection (c) for residential services, including touch-tone services, and for single-line business services, including touch-tone services, within the residential and single-line business service basket. The commission shall establish a formula for adjustments to the price caps. The commission also shall establish price caps at the prices existing when the regulatory plan is filed for the miscellaneous services basket. The commission shall approve any adjustments to the price caps for the miscellaneous service basket, as provided in subsection (f).

(f) On or before January 1, 1997, the commission shall issue a final order in a proceeding to determine the price cap adjustment formula that shall apply to the price caps for the local residential and single-line business and the miscellaneous services baskets and for sub-categories, if any, within those baskets. In determining this formula, the commission shall balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state. The commission also shall establish any informational filing requirements necessary for the review of any price cap tariff filings, including price increases or decreases within the caps, to verify such caps would not be exceeded by any proposed price change. The adjustment formula shall apply to the price caps for the local residential and single-line business basket after December 31, 1999, and to the miscellaneous services basket after December 31, 1997. The price cap formula, but not actual prices, shall be reviewed every five years.

(g) The price caps for the residential and single-line business service basket shall be capped at their initial level until January 1, 2000, except for any increases authorized as a part of the revenue neutral rate rebalancing under subsection (c). The price caps for this basket and for the categories in this basket, if any, shall be adjusted annually after December 31, 1999, based on the formula determined by the commission under subsection (f).

(h) The price cap for the switched access service basket shall be set based upon the local exchange carrier's intrastate access tariffs as of January 1, 1997, except for any revenue neutral rate rebalancing authorized in accordance with subsection (c). Thereafter, the cap for this basket shall not change except in connection with any subsequent

revenue neutral rebalancing authorized by the commission under subsection (c).

(i) The price caps for the miscellaneous services basket shall be adjusted annually after December 31, 1997, based on the adjustment formula determined by the commission under subsection (f).

(j) A price cap is a maximum price for all services taken as a whole in a given basket. Prices for individual services may be changed within the service categories, if any, established by the commission within a basket. An entire service category, if any, within the residential and single-line business basket or miscellaneous services basket may be priced below the cap for such category. Unless otherwise approved by the commission, no service shall be priced below the price floor which will be long-run incremental cost and imputed access charges. Access charges equal to those paid by telecommunications carriers to local exchange carriers shall be imputed as part of the price floor for toll services offered by local exchange carriers on a toll service basis.

(k) A local exchange carrier may offer promotions within an exchange or group of exchanges. All promotions shall be approved by the commission and shall apply to all customers in a nondiscriminatory manner within the exchange or group of exchanges.

(l) Unless the commission authorizes price deregulation at an earlier date, intrastate toll services within the miscellaneous services basket shall continue to be regulated until the affected local exchange carrier begins to offer 1 + intraLATA dialing parity throughout its service territory, at which time intrastate toll will be price deregulated, except that prices cannot be set below the price floor.

(m) On or before July 1, 1997, the commission shall establish guidelines for reducing regulation prior to price deregulation of price cap regulated services in the miscellaneous services basket, the switched access services basket, and the residential and single-line business basket.

(n) Subsequent to the adoption of guidelines pursuant to subsection (m), the commission shall initiate a petitioning procedure under which the local exchange carrier may request rate range pricing. The commission shall act upon a petition within 21 days, subject to a 30 day suspension. The prices within a rate range shall be tariffed and shall apply to all customers in a nondiscriminatory manner in an exchange or group of exchanges.

(o) A local exchange carrier may petition the commission to designate an individual service or service category, if any, within the miscellaneous services basket, the switched access services basket or the residential and single-line business basket for reduced regulation. The commission shall act upon a petition for reduced regulation within 21 days, subject to a suspension period of an additional 30 days, and upon a good cause showing of the commission in the suspension order, or within such shorter time as the commission shall approve. The commission shall issue a final order within the 21 day period or within a 51 day period if a suspension

has been issued. Following an order granting reduced regulation of an individual service or service category, the commission shall act on any request for price reductions within 7 days subject to a 30 day suspension. The commission shall act on other requests for price cap adjustments, adjustments within price cap plans and on new service offerings within 21 days subject to a 30 day suspension. Such a change will be presumed lawful unless it is determined the prices are below the price floor or that the price cap for a category, if any, within the entire basket has been exceeded.

(p) The commission may price deregulate within an exchange area, or at its discretion on a statewide basis, any individual service or service category upon a finding by the commission that there is a telecommunications carrier or an alternative provider providing a comparable product or service, considering both function and price, in that exchange area. The commission shall act upon a petition for price deregulation within 21 days, subject to a suspension period of an additional 30 days, and upon a good cause showing of the commission in the suspension order, or within such shorter time as the commission shall approve; provided that no such petition shall be filed prior to July 1997, unless the commission otherwise authorizes. The commission shall issue a final order within the 21 day period or within a 51 day period if a suspension has been issued.

(q) Upon complaint or request, the commission may investigate a price deregulated service. The commission shall resume price regulation of a service provided in any exchange area by placing it in the appropriate service basket, as approved by the commission, upon a determination by the commission that there is no longer a telecommunications carrier or alternative provider providing a comparable product or service, considering both function and price, in that exchange area.

(r) The commission shall require that for all local exchange carriers all such price deregulated basic intraLATA toll services be geographically averaged statewide and not be priced below the price floor established in subsection (j).

(s) Cost studies to determine price floors shall be performed as required by the commission in response to complaints. In addition, notwithstanding the exemption in subsection (b), the commission may request information necessary to execute any of its obligations under the act.

(t) A local exchange carrier may petition for individual customer pricing. The commission shall respond expeditiously to the petition within a period of not more than 30 days subject to a 30 day suspension.

(u) No audit, earnings review or rate case shall be performed with reference to the initial prices filed as required herein.

(v) Telecommunications carriers shall not be subject to price regulation, except that: Access charge reductions shall be passed through to consumers by reductions in basic intrastate toll prices; and basic toll prices shall remain geographically averaged statewide. As required under

K.S.A. 66-131, and amendments thereto, and except as provided for in subsection (c) of section 5, telecommunications carriers that were not authorized to provide switched local exchange telecommunications services in this state as of July 1, 1996, including cable television operators who have not previously offered telecommunications services, must receive a certificate of convenience based upon a demonstration of technical, managerial and financial viability and the ability to meet quality of service standards established by the commission. Any telecommunications carrier or other entity seeking such certificate shall file a statement, which shall be subject to the commission's approval, specifying with particularity the areas in which it will offer service, the manner in which it will provide the service in such areas and whether it will serve both business customers and residential customers in such areas. Any structurally separate affiliate of a local exchange carrier that provides telecommunications services shall be subject to the same regulatory obligations and oversight as a telecommunications carrier, as long as the local exchange carrier's affiliate obtains access to any services or facilities from its affiliated local exchange carrier on the same terms and conditions as the local exchange carrier makes those services and facilities available to other telecommunications carriers. The commission shall oversee telecommunications carriers to prevent fraud and other practices harmful to consumers and to ensure compliance with quality of service standards adopted for all local exchange carriers and telecommunications carriers in the state.

New Sec. 7. On or before January 1, 1997, the commission shall establish the Kansas lifeline service program, hereinafter referred to as the KLSP. The purpose of the KLSP shall be to promote the provision of universal service by local exchange carriers to persons with low income. The KLSP shall be targeted to maintain affordable rates for residential local exchange service. The commission shall approve a means test to determine the eligibility of customers for such low-income assistance.

New Sec. 8. (a) All local exchange carriers and telecommunications carriers providing long distance service in Kansas shall reduce their state- wide averaged basic long distance rates to reflect the net reductions in access charges; however, such carriers shall be allowed to increase long distance rates to reflect the KUSF funding requirements set forth in section 9.

(b) The commission shall approve, upon not more than 120 days' notice, any basic local exchange price increases that in the aggregate in any one year are \$1.50 or less per access line per month, that are proposed by any rural telephone company which is subject to traditional rate of return regulation and that comply with the requirements of this section. Any such proposed price increases shall be presumed reasonable and not subject to commission investigation and review if the rural telephone company has followed the notice requirements set forth below. However, the commission shall initiate an investigation if more than 15% of the subscribers subject to the rate increase request such an investigation within 60 days of the date of distribution of the notice of the proposed change. Upon filing such an application for a rate increase, any rural telephone company seeking expedited approval of the proposed rate under this section shall send a notice to its subscribers by regular mail,

which may be included with regular subscriber mailings. Such mailings shall include the name, mailing address and telephone number of the commission. The notice shall include a schedule of the proposed local exchange rates, the effective date of the rates and a description of the procedures by which the subscribers can petition the commission to determine the reasonableness of the proposed rates, including a provision specifically stating that protest by 15% or more of subscribers subject to the proposed rate increase would require the commission to initiate an investigation concerning the reasonableness of the proposed rate increase.

(c) The commission shall have the right to investigate and determine the reasonableness of an increase in local exchange rates and charges under subsection (b) by any rural telephone company within one year of the time local exchange rates or charges are increased. If the commission determines such rate or charge increases are unreasonable, the commission shall have the authority to order a rate hearing and, after such hearing, shall have the authority to rescind all or any portion of the increases found to be unreasonable.

New Sec. 9. On or before January 1, 1997, the commission shall establish the Kansas universal service fund, hereinafter referred to as the KUSF.

(a) The initial amount of the KUSF shall be comprised of local exchange carrier revenues lost as a result of rate rebalancing pursuant to subsection (c) of section 6 and subsection (a) of section 8. Such revenues shall be recovered on a revenue neutral basis. The revenue neutral calculation shall be based on the volumes and revenues for the 12 months prior to September 30, 1996, adjusted for any rate changes.

(b) The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility or wireless telecommunications service provider which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution.

(c) Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

(d) The commission shall periodically review the KUSF to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. If the commission determines that any changes are needed, the commission shall modify the KUSF accordingly.

(e) Any qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider may request supplemental funding from the KUSF based upon a percentage increase in access lines over the 12 month period prior to its request. The supplemental funding shall be incurred for the purpose of providing services to and within the service area of the qualified telecommunications carrier, telecommunications public utility or wireless telecommunications service provider. Supplemental funding from the KUSF shall be used for infrastructure expenditures necessary to serve additional customers within the service area of such qualifying utility, provider or carrier. All affected parties shall be allowed to review and verify a request of such a qualified utility, carrier or provider for supplemental funding from the KUSF, and to intervene in any commission proceeding regarding such request. The commission shall issue an order on the request within 120 days of filing. Additional funding also may be requested for: the recovery of shortfalls due to additional rebalancing of rates to continue maintenance of parity with interstate access rates; shortfalls due to changes to access revenue requirements resulting from changes in federal rules; additional investment required to provide universal service and enhanced universal service; and for infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory or judicial authority. Such requests shall be subject to simplified filing procedures and the expedited review procedures, as outlined in the stipulation attached to the order of November 19, 1990 in docket no. 127,140- U (Phase IV).

(f) Additional supplemental funding from the KUSF, other than as provided in subsection (e) of this section, may be authorized at the discretion of the commission. However, the commission may require approval of such funding to be based upon a general rate case filing. With respect to any request for additional supplemental funding from the KUSF, the commission shall act expeditiously, but shall not be subject to the 120 day deadline set forth in subsection (e).

New Sec. 10. (a) Local exchange carriers that provided switched local exchange services in the state prior to January 1, 1996, or their successors, shall serve as the carrier of last resort in their exchanges and shall be eligible to receive KUSF funding. However, with respect to the Hill City exchange area in which multiple carriers were certified prior to January 1, 1996, the commission's determination, subject to court appeals, shall determine which authorized carrier shall serve as carrier of last resort. The local exchange carrier serving as the carrier of last resort shall remain the carrier of last resort and shall be entitled to recover the costs of serving as carrier of last resort.

(b) Beginning March 1, 1997, the amount of KUSF funds owed to each qualifying telecommunications carrier, telecommunications public utility or wireless telecommunications service provider in the state, based upon the revenue requirements assigned to the funds for such qualifying utility, carrier or provider, shall be allocated by the fund administrator in equal monthly installments.

New Sec. 11. (a) The commission shall utilize a competitive bidding process to select a neutral, competent and bonded third party to administer the KUSF.

(b) The administrator shall be responsible for: (1) Collecting and auditing all relevant information from all qualifying telecommunications public utilities, telecommunications carriers or wireless telecommunications service providers receiving funds from or providing funds to the KUSF; (2) verifying, based on the calculations of each qualifying telecommunications carrier, telecommunications public utility or wireless telecommunications service provider, the obligation of each such qualifying carrier, utility or provider to generate the funds required by the KUSF; (3) collecting all moneys due to the KUSF from all telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers in the state; and (4) distributing amounts on a monthly basis due to qualifying telecommunications public utilities, wireless telecommunications service providers and telecommunications carriers receiving KUSF funding.

(c) Any information made available or received by the administrator from carriers, utilities or providers receiving funds from or providing funds to the KUSF shall not be subject to any provisions of the Kansas open records act and shall be considered confidential and proprietary.

(d) The administrator shall be authorized to maintain an action to collect any funds owed by any telecommunications carrier, public utility or wireless telecommunications provider in the district court in the county of the registered office of such carrier, utility or provider or, if such carrier, utility or provider does not have a registered office in the state, such an action may be maintained in the county where such carrier's, utility's or provider's principal office is located. If such carrier, utility or provider has no principal office in the state, such an action may be maintained in the district court of any county in which such carrier, utility or provider provides service.

(e) The KUSF administrator shall be responsible to ensure that funds do not fall below the level necessary to pay all amounts collectively owed to all qualifying telecommunications public utilities, wireless telecommunications service providers and telecommunications carriers. The administrator shall have the authority to retain and invest in a prudent and reasonable manner any excess funds collected in any period to help ensure that adequate funds are available to cover amounts payable in other periods.

New Sec./007006/(a) As used in this section, ``the internet'' means the international network of interconnected government, educational, and commercial computer networks. An ``internet service provider'' means an entity that provides end user access to the internet. Nothing in this section shall be construed to mean that the commission has any regulatory jurisdiction over internet service providers. The provisions of this section apply only to those locations of the state where local (7-digit) internet access, which supports at least 14.4 kilobits per second service with no more than 5% blockage during the busiest hour of the service, is not available on October 1, 1996. The provisions of this section also

apply to those locations where local access has been discontinued as of October 1, 1996, or access to the service deteriorates to more than 5% blockage during the busiest hour of the service.

(b) On or after July 1, 1996 and prior to October 1, 1996, rural telephone companies shall file concurring tariffs to offer internet access in locations identified in subsection (a) to an intraLATA internet service provider of the customer's choice. All rural telephone companies, including local exchange carriers pursuant to subsection (c), shall provide dial-up access to support at least 14.4 kilobit per second service ubiquitously throughout the exchange service area, with 28.8 kilobit per second service made available to any requesting customer on or after July 1, 1999.

(c) On or after July 1, 1996 and prior to October 1, 1996, all local exchange carriers, other than rural telephone companies, shall file tariffs with the commission for two flat-rate dial-up plans, which would provide internet access in locations identified in subsection (a) to an intraLATA internet service provider of the customer's choice. All such plans shall be approved by the commission if they meet the criteria established in this section. The first plan includes: (1) For off-peak users, a monthly rate of not more than \$15 per line for the hours of 5 p.m. through 7:59 a.m. weekdays and all hours on weekends and federal holidays. Calls placed outside this specified off-peak period shall be billed at prevailing toll rates. (2) For unlimited usage, the rate shall not exceed \$30 per line per month. The commission shall waive imputation considerations in reviewing and approving these service offerings.

(d) All internet service providers operating in the state shall register with the commission. Such registration shall include the name of the internet service provider and the provider's address, contact name, phone number, and access line numbers. This information shall be maintained by the commission and disseminated to all local exchange carriers and rural telephone companies providing access to internet service providers in accordance with provisions of this section. This information shall be used to validate customer service requests.

(e) During the 1999 session of the Kansas legislature, the commission shall transmit a report to the chairperson, vice-chairperson and ranking minority member of the house standing committee on energy and natural resources, the senate standing committee on transportation and utilities and the joint committee on computers and telecommunications concerning implementation of this section. The report shall include recommendations for revisions in this section necessitated by technological innovation or market changes in the telecommunications industry. The report also may include an expiration date for this section.

Sec./007006/K.S.A. 1995 Supp. 75-4709 is hereby amended to read as follows: 75-4709. (a) The secretary of administration shall make provision provide for and coordinate all telecommunications services for all divisions, departments and agencies of the state pursuant to policies established by the Kansas information resources council. The secretary of administration shall have the authority to control the acquisition, retention and use of all telecommunications services for all

divisions, departments and agencies of the state, and to develop and review plans and specifications for telecommunications services throughout the state.

(b) The secretary of administration, when feasible, may extend enter into agreements with any entity defined in this subsection extending to such entity the use of state intercity telecommunications facilities and services under the control of the secretary to private, nonprofit corporations designated by the governor pursuant to federal law to perform functions within the state as provided by federal law or to any governmental units, and may enter into agreements with such private, nonprofit corporations or governmental units for provision of such service.

As used in this subsection, an ``entity'' means:

(1) Any governmental unit, including any state agency, taxing subdivision of the state or municipality; or

(2) any hospital or nonprofit corporation which the secretary determines to be performing any state function on an ongoing basis through agreement or otherwise, or any function which will assist a governmental unit in attaining an objective or goal, bearing a valid relationship to powers and functions of such unit.

(b) (c) Every record made, maintained or kept by the secretary of administration or the division of information systems and communications, or any agency or instrumentality thereof, which relates to the acquisition, retention or use of telecommunications services provided to any division, department or agency of the state, state officer or governmental unit and which pertains to individually identifiable individuals using such telecommunication services shall constitute for purposes of the open records act a record of the division, department or agency of the state, state officer or governmental unit to which such records relate and the. The official custodian of such records for the purposes of the open records act shall be the official custodian of the records of such division, department or agency of the state, state officer or governmental unit.

New Sec./007006/No references in this act to local exchange carriers in the Hill City exchange area shall be considered a statement of legislative intent for the purpose of determining which carrier or carriers shall be authorized to provide service to the exchange.

New Sec./007006/In order to adequately assess the impact of TeleKansas I, the commission shall review the capital expenditures required to be made by telecommunications public utilities pursuant to subsection (a) of K.S.A. 66-1,197, and amendments thereto. After review of such expenditures, the commission shall determine the extent to which such expenditures have not been made and may issue an order establishing a schedule for completion of such capital expenditures.

Sec./007006/K.S.A. 1995 Supp. 66-125 is hereby amended to read as follows: 66-125. (a) A Any investor-owned electric public utility or common carrier incorporated in the state of Kansas having a total capitali-

zation in excess of \$1 billion dollars may issue stocks, certificates, bonds, notes or other evidences of indebtedness, payable at periods of more than 12 months after the date thereof, when necessary for the acquisition of property, for the purpose of carrying out its corporate powers, the construction, completion, extension or improvements of its facilities, for the improvements or maintenance of its service, for the discharge or lawful refunding of its obligations, or for such other purposes as may be authorized by law. Prior to any such issuance, there shall be secured from the commission a certificate stating the amount, character, purposes and terms on which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. In lieu of securing a certificate from the commission, if the issuance requires a registration statement to be filed with the securities and exchange commission or such utility obtains an authorization or approval of such issuance from another state or federal agency, the public utility or common carrier may file with the state corporation commission a copy of the information filed with the securities and exchange commission or such other agency.

(b) The proceedings for obtaining such certificate from the commission and the conditions of its being issued shall be as follows:

(1) In case the stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued for money only, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer of the company having knowledge of the facts, showing:

(A) The amount and character of the proposed stocks, certificates, bonds, notes or other evidences of indebtedness;

(B) the general purposes for which they are to be issued;

(C) the terms on which they are to be issued;

(D) the total assets and liabilities of the public utility or common carrier; and

(E) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(2) In case stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued partly or wholly for property or services or other consideration than money, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer having knowledge of the facts, showing:

(A) The amount and character of the stocks, certificates, bonds, notes or other evidences of indebtedness proposed to be issued;

(B) the general purposes for which they are to be issued;

(C) a general description and an estimated value of the property or services for which they are to be issued;

(D) the terms on which they are to be issued or exchanged;

(E) the amount of money, if any, to be received for the same in addition to such property, services or other consideration;

(F) the total assets and liabilities of the public utility or common carrier; and

(G) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(c) The commission may also require the public utility or common carrier to furnish such further statements of facts as may be reasonable and pertinent to the inquiry. Upon full compliance by the applicant with the provisions of this section the commission shall forthwith issue a certificate stating the amount, character, purposes and terms upon which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which shall be issued by such public utility or common carrier contrary to the provisions of this act shall be voidable by the commission, except as provided in subsection (d).

(d) The provisions of this section shall not apply to motor carriers, as defined in K.S.A. 66-1,108, and amendments thereto or any public utility except as provided in subsection (a). Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which were issued by a motor carrier prior to the effective date of this act without obtaining a certificate from the commission shall be deemed valid.

New Sec./007006/The definitions in this act shall not be used as a basis to determine whether a taxpayer is a public utility for purposes of K.S.A. 79-5a01, and amendments thereto.

New Sec./007006/The commission shall not enforce any provision of this act nor any order entered by authority of this act which is specifically preempted by the federal act.

Sec. 19. K.S.A. 66-127 is hereby amended to read as follows: No common carrier or public utility governed by the provisions of this act, domestic or foreign, shall hereafter purchase or acquire, take or hold any part of the capital stock, bonds or other forms of indebtedness of any competing public utility or common carrier, either as owner or pledgee, unless authorized by the commission. Any common carrier engaged in intrastate commerce in this state is prohibited in the transportation of such commerce, articles or commodities under the following circumstances and conditions:

(a) When the article or commodity has been manufactured, mined or produced by a carrier or under its authority and at the time of the transportation the carrier has not in good faith, before the act of transportation, disassociated itself from such article or commodity;

(b) when the carrier owns the article or commodity to be transported, in whole or part;

(c) when the common carrier at the time of transportation has a legal or equitable interest, directly or indirectly, in the article or commodity, except materials and supplies for its own use.

Every public utility is prohibited from engaging in any business in this state which is not in conformity with its charter or in which it is not permitted to engage under the laws of the state of Kansas: Provided, That this section shall not apply to ownership by railroads of the stock, bonds, or other forms of indebtedness of union depot or terminal railroad properties used in common by two or more such railroads. The provisions of this section shall not apply to resellers of telecommunications services or interexchange carriers.

Sec. 20. K.S.A. 66-124, 66-127 and 66-1,187 and K.S.A. 1995 Supp. 66-125 and 75-4709 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 17, 1996.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Chairman Mark Sievers
Commissioner Ward Loyd
Commissioner Thomas E. Wright

In the Matter of a General Investigation into)
the Kansas Universal Service Fund pursuant) Docket No. 12-GUMT-170-GIT
to K.S.A. 2010 Supp. 66-2008(c).)

ORDER OPENING DOCKET, DESIGNATING PREHEARING OFFICER,
AND DIRECTING ACTIVE PARTIES TO FILE ENTRY OF APPEARANCE

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and being fully advised of all matters of record, the Commission summarizes the arguments of the parties and finds and concludes as follows:

1. Since 1934, universal service has focused on providing voice communications service to all Americans at reasonable charges. In early 2009, the United States Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan (NBP) to ensure ubiquitous access to broadband services. In response, the FCC issued created and released the *Connecting America: The National Broadband Plan* on March 16, 2010. Under this proposal, the focus of universal service will change, reflecting the need for broadband infrastructure for many forms of communication, including voice communication.

2. Carriers throughout Kansas have received assistance in providing universal service to high-cost areas of the state and to low-income consumers through support received from both the federal universal service fund (FUSF) and the Kansas universal service fund (KUSF). The FCC's proposed NBP-related wireless/mobility, universal service and intercarrier compensation reform initiatives necessitates this Commission initiating an investigation to explore the impact of

universal service reform on Kansas and more particularly on the KUSF. The Commission has jurisdiction to initiate this investigation pursuant to K.S.A. 2010 Supp. 66-2008(c).

I. Background

3. The Kansas Legislature enacted the Kansas Telecommunications Act of 1996 (KTA), K.S.A. 66-2001, *et seq.*, in part, to promote telecommunications competition within the state. In K.S.A. 66-2001, the Legislature declared it is the public policy of the state to:

- (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;
- (b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;
- (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
- (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and
- (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

4. As part of the KTA, the Legislature charged this Commission with establishing the KUSF on or before January 1, 1997.¹ This is the fifteenth year the KUSF has provided support to carriers with service territory in Kansas to ensure universal service is available in high-cost areas of the state, to provide dual-party relay service and telecommunications equipment for persons with disabilities, and to assist those with lower incomes through the Lifeline program. For the last several years, the KUSF has also provided funding for Kan-Ed, which benefits distance learning and public library services. Currently, the fund provides support of approximately \$65.7 million annually to fulfill the requirements for which the KUSF was established.²

¹ K.S.A. 2010 Supp. 66-2008.

² KCC Docket No. 11-GIMT-201-GIT, Direct Testimony of Sandra K. Reams, filed December 22, 2011, page 2.

5. Initially, KUSF support was used to replace lost access charge revenues with explicit, rather than implicit, support. In delegating to the Commission the responsibility to implement the KUSF, the Legislature also required that the fund be reviewed periodically to determine if the cost to provide local service by carriers eligible to receive such funds justified modification. In the event the Commission determined changes were needed, the Legislature directed the Commission to modify the KUSF accordingly.³

6. In addition to the KUSF, support for universal service in Kansas is provided from the FUSF. The most significant relationship between KUSF and FUSF involves support for high-cost service. In determining the amount of KUSF support that will be provided to an incumbent carrier, the Commission takes into account the amount of FUSF received by the carrier. For this reason, any change in FUSF support will have a direct impact on KUSF support.

II. Purpose of this General Investigation

7. Kansas currently ranks third in receiving high-cost support from the FUSF. In 2010, Kansas carriers received approximately \$256 million in federal high-cost support for service areas located in Kansas. From 1998 to 2010, Kansas carriers have received approximately \$1.9 billion in federal high-cost support for Kansas service areas.⁴ As a result of the large amount of FUSF high-cost support used for Kansas service areas, any changes in how this support is administered will directly impact the amount that is available for Kansas service areas.

8. In building on the NBP, the FCC issued a Notice of Inquiry (NOI) and Notice of Proposed Rulemaking (NPRM) Regarding the Connect America Fund (CAR) – A National Broadband Plan for our Future (the CAR NPRM), seeking comment on the use of a model to determine universal service support levels, on the best way to accelerate targeting of funding toward unserved areas, and on specific reforms to cap growth and cut inefficient funding in the legacy high-cost support mechanisms. In addition, the FCC issued a NPRM (the Mobility Fund NPRM) on October 14, 2010, concerning the development of a Mobility Fund and seeking

³ K.S.A. 2010 Supp. 66-2008(c).

⁴ Federal-State Joint Board on Universal Service Monitoring Report: Status through October 2010, released December 30, 2010, Table 3.14.

comment on using the FUSF “reserves” to improve mobile voice coverage and wireless broadband access to the Internet. To further its previously noted initiatives, the FCC released a Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) addressing reform of the FUSF to promote broadband deployment and of the Intercarrier Compensation (ICC) regime and requesting comments on a myriad of issues aimed at “[b]ringing robust, affordable broadband to all Americans.”⁵ The FCC seeks to fundamentally change the FUSF and ICC systems to eliminate waste and inefficiency and to reorient FUSF and ICC to meet the nation’s broadband availability challenge. Because the FCC views broadband deployment, FUSF reform, and ICC reform as interrelated, these issues were addressed in one NPRM.

9. The FCC recognizes that state regulators and the FCC share oversight responsibilities related to the FUSF and ICC.⁶ During the last 15 years, this Commission has implemented the KUSF and has addressed ICC issues within its jurisdiction to promote the goals of the KTA. Where required and/or applicable, the Commission has incorporated FCC policies to encourage competition within the telecommunications industry in Kansas. The FCC’s newest reform proposals will substantially affect Kansans and this Commission’s continuing implementation of the KTA.

10. Based upon its review of anticipated changes, the Commission’s staff (Staff) has recommended that, as the FCC revisits its definition of universal service and reconsiders the role of advanced networks in today’s world, this Commission undertake an evaluation of priorities for providing communication services throughout Kansas, including what policies are needed to promote these priorities and this state’s goals as defined in K.S.A. 66-2001. Staff has urged the Commission to open a proceeding to explore issues related to the KUSF. But Staff has recognized policy issues reviewed within this proceeding may be broad reaching and are not

⁵ Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM), FCC 11-13, *rel.*, released February 9, 2011, ¶ 1.

⁶ See, e.g., FCC USF-ICC NPRM dated February 8, 2011, *supra*, at ¶13: “We recognize that USF and ICC are both hybrid state-federal systems, and that reform will work best with the Commission and state regulators cooperating to achieve shared goals.”

interdependent. As a result, issues may need to be reviewed in phases as they become ripe for consideration. For now, Staff has recommended the Commission open this proceeding for the following four reasons:

(1) Staff believes the Commission will need to review the impact any FCC USF/ICC reform will have on Kansas and the KUSF, including a review of the state's definition of universal service.

(2) Staff believes it is prudent for the Commission to review the KUSF pursuant to K.S.A. 66-2008(c) to determine if the costs of qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications service providers to provide local service justify modification of the KUSF. It is also prudent to review the fund's performance against the policy objectives set forth in K.S.A. 66-2001.

(3) Staff believes it is most efficient to address any findings from the pending audit of the KUSF third party administrator in this docket.

(4) The orderly progression of a docket where costs can be properly assessed is the most efficient, effective and transparent way for the Commission, as a whole, to address these issues exploring the KUSF.

11. The Commission agrees with Staff that a general investigation should be opened at this time in which the Commission will explore changes that will be needed to maintain a KUSF that is "not inconsistent with the [FCC's] rules to preserve and advance universal service."⁷ This investigation will include, *inter alia*, a review of the definition of universal service that takes into account the impact of any FCCUSF reform and ICC reform. In this review, the Commission will also evaluate whether modification of the KUSF is justified under K.S.A. 2010 Supp. 66-2008(c), taking into account the policy objectives of the KTA as articulated by the Legislature in K.S.A. 66-2001. At this time, the Commission is preparing to update audits of the KUSF third-party administrator and is aware the current administration contract expires June 30, 2012. Any findings from that audit will be examined to determine whether they should be addressed in this proceeding. The Commission finds it appropriate to open this docket. The costs of this proceeding will be assessed against all carriers or entities that contribute to the KUSF (i.e., ETCs, CLECs, IXCs, VOIPs and wireless), as discussed in a separate Order Assessing Costs that

⁷ 47 U.S.C. § 254(f).

accompanies this Order Opening Docket. Those carriers or entities shall be treated as parties to this proceeding and shall be served with this Order Opening Docket. As this docket progresses, the Commission may find it appropriate to include additional parties that might be impacted by the issues being explored in this proceeding.

III. Entry of Appearance and Electronic Service for Active Parties

12. The Commission anticipates carriers or entities that will want to be actively involved in this proceeding will be fewer than all carriers or entities being served with this Order. Active parties are those carriers or entities that desire to be involved in litigating issues that will be identified and explored in this general investigation. Only those entities that participate as active parties in this docket will be served with pleadings, testimony, briefs, and procedural orders as this proceeding progresses; only active parties will be given notice of and allowed to participate in hearings, roundtables, or other sessions that are scheduled in this proceeding. Those entities that desire to participate as an active party in this proceeding shall file an entry of appearance by September 30, 2011. Any carrier or entity that has been served with this Order but has chosen not to participate as an active party will not be served with pleadings, testimony, briefs and procedural orders during litigation of this docket. However, all entities being served with this Order will be served with any Commission decision that is a final order. Upon receipt of a Commission final order, an entity that chose not to actively participate in this docket will be allowed to petition for reconsideration, but the entity will not be allowed to introduce new issues inasmuch as it was given notice of the adjudicative proceeding with service of this Order but chose not to participate.⁸ If a carrier or entity did not previously enter its appearance in this proceeding but later desires to become an active party, that carrier or entity may do so by submitting an Entry of Appearance that states whether it is willing to receive electronic service and, if so, provides an email address for service, as discussed in ¶ 12.

13. The Commission urges entities that are involved as active parties to this proceeding consider agreeing to receive pleadings, testimony, briefs, and orders by electronic

⁸ See K.S.A. 77-617(c).

service without a hard-copy follow-up as required by K.A.R. 82-1-216(a)(6). Confidential papers will be served either electronically if confidentiality can be retained or by some other method acceptable to the parties, such as providing information on a compact disc. For entities agreeing to use electronic service, testimony, briefs, and other pleadings must be served electronically by 3:00 p.m. on the date due, without requiring service among the parties of a follow-up hard copy, but the original and at least seven paper copies of testimony, briefs, and other pleadings must still be filed in the Commission's docket room by close of business on the date of the deadline.⁹ Any electronic service without follow-up hard copies will specifically state in the electronic message that the electronic message constitutes service of the attached document and that a hard copy will not follow to make clear paper copies will not also be provided. Electronic service of testimony, briefs and other pleadings shall include service on the Prehearing Officer designated below at m.coffman@kcc.ks.gov.

VI. Confidential Information

14. In conducting this investigation, the Commission may at times seek information from parties that is confidential commercial information.¹⁰ The Commission recognizes that some information may be particularly sensitive due to the extremely competitive nature of this industry. If a party identifies information requested by the Commission as particularly sensitive due to competition in the industry, the Commission shall not disclose this information to anyone other than the Commission and members of the Commission's staff. The Commission will carefully consider whether disclosure is proper if anyone not approved by the party requests permission to allow inspect such information.¹¹

V. Prehearing Officer Designated

15. Although the Commission will conduct any evidentiary hearing in this docket, the Commission designates a prehearing officer to conduct any prehearing conferences that might be needed and to address any matters that are appropriately considered in a prehearing conference,

⁹ K.A.R. 82-1-215(a).

¹⁰ K.S.A. 2010 Supp. 66-1220a.

¹¹ K.S.A. 2010 Supp. 66-1220a(a)(3).

including all items listed in the Kansas Administrative Procedure Act (KAPA) at K.S.A. 77-517(b). These items include, for example, conversion of the proceeding to another type; recommending the opening or other dockets; exploration of settlement possibilities; clarification of issues; rulings on identity and limitation of the number of witnesses; objections to proffers of evidence; determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form, and the extent to which telephone or other electronic means will be used as a substitute for proceedings in person; order of presentation of evidence and cross-examination; discovery orders and protective orders; and such other matters as will promote the orderly and prompt conduct of the hearing. The Commission designates Martha J. Coffman, Advisory Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone 785-271-3105, email address m.coffman@kcc.ks.gov, to act as Prehearing Officer in this proceeding.¹² The Commission, as it deems necessary, may designate other staff members to serve in this capacity.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The Commission hereby opens this investigation for the reasons discussed in this Order.

(B) Any carrier or entity that desires to participate as an active party in this proceeding shall file an Entry of Appearance by September 30, 2011, stating whether the party will agree to electronic service and providing an email address, as discussed in this Order.

(C) This Order will be served on all carriers or entities that contribute to the KUSF (i.e., ETCs, CLECs, IXCs, VOIPs and wireless). K.S.A. 66-1502.

(D) Parties have fifteen days from the date of service of this Order in which to petition the Commission for reconsideration of any matter decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

(E) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

¹² K.S.A. 77-516; K.S.A. 2010 Supp. 77-551(c).

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn; Loyd, Com.; Wright, Com.

Dated: SEP 13 2011


ORDER MAILED SEP 13 2011

Patrice Petersen-Klein
Executive Director

mjc